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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,243	04/12/2001	Jeremy A. Tatum	M40.26493-04.US	5859

128 7590 02/26/2003

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EXAMINER
LE, QUE TAN

ART UNIT	PAPER NUMBER
2878	

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.	Applicant(s)
09/834,243	TATUM ET AL.
Examiner	**Art Unit**
Que T Le	2878

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)[·] Responsive to communication(s) filed on *11 February 2003*.

2a)[ ] This action is **FINAL**. 2b)[X] This action is non-final.

3)[ ] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)[·] Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) *10-14* is/are withdrawn from consideration.

5)[ ] Claim(s) _____ is/are allowed.

6)[·] Claim(s) *1-9* is/are rejected.

7)[ ] Claim(s) _____ is/are objected to.

8)[·] Claim(s) *10-14* are subject to restriction and/or election requirement.

Application Papers

9)[·] The specification is objected to by the Examiner.

10)[ ] The drawing(s) filed on _____ is/are a)[ ] accepted or b)[ ] objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)[ ] The proposed drawing correction filed on _____ is: a)[ ] approved b)[ ] disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)[ ] The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)[ ] Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)[ ] All b)[ ] Some * c)[ ] None of:

1. [ ] Certified copies of the priority documents have been received.
2. [ ] Certified copies of the priority documents have been received in Application No. _____.
3. [ ] Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)[ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) [illegible]

This is in response to Applicants' election filed February 11, 2003.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The disclosure is objected to because of the following informalities: In the specification:

On page 8:

On line 8, "Fig. 2 illustrates" should be changed to "Figs. 2(A-B) illustrate".

On line 14, "Fig. 4 illustrates" should be changed to "Figs. 4(A-C) illustrate".

On line 23, "Fig. 5 illustrates" should be changed to "Figs. 5(A-B) illustrate".

On page 9:

On line 5, "Fig. 6 illustrates" should be changed to "Figs. 6(A-B) illustrate".

On line 9, "Fig. 7 illustrates" should be changed to "Figs. 7(A-B) should be changed to "Figs. 7(A-B) illustrate".

Appropriate correction is required.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable

teaching of the exact operation/performances (determination of motion characteristics of the object) of the cited "motion analysis module".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the citation of "a motion analysis module for determining motion characteristics of an objected detected" on lines 7-8 is vague. How and in what manner is the motion characteristics determined/achieved? Term "an objected detected" is unclear. What exactly is the objected detected? It appears should be "an objected detected (within said environment)". Citation regarding the target characteristics determination of the microprocessor on lines 12-14 is vague because the "signals received by said detector and input from said motion analysis module" have not been clearly defined. What exactly are the "signals received by said detector" and "input from the motion analysis module"? It is unclear whether "an object detected", "a target" and "a detected object" are the same element. It also unclear whether the determination performed by the motion analysis module and the determination performed by the microprocessor are the same. The intended scope of the claimed invention has not been clearly defined. Similar citation in claim 5 is similarly vague. In addition, citation of

the characteristics coming from? The manner in which characteristics being achieved has not been clearly defined. Also, the phrase "determines target characteristics based on said signals received by said detector, reference to said memory and input from said motion analysis module", on lines 12-14, is vague in its given context.

Claims 2-4 and 6-9 are indefinite because they include the indefiniteness of the claims on which they depend.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 1-6 of copending Application No. 09/834,244 and 09/834,242, respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention, claims 1-9, of the present application is a similar version of the claimed invention, claims 1-6 and 1-7, of the above identified U.S. Patents with

recognized equivalents. Also, selecting a known available "photodiode" for an optical detection device or detector is a mere matter of obvious design choice to one of ordinary skill in the optics art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3 and 5-8, as understood by examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Korah et al 6,115,111.

plurality of laser signals; at least one CCD (28) as detector; a microprocessor including a motion analysis module and a display (24, 36, 80) for determining motion/displacement of an object. The laser source are able to emit at least two laser signals statically and/or serially.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korah et al 6,115,111.

With respect to claims 4 and 9, although Korah et al lack an inclusion of the use of a photodiode for the detector, selecting a known available detector device such as photodiode for detecting an optical signal would have been obvious to one of ordinary skill in the art. It would have been obvious to modify Korah et al accordingly in order to provide a compact optics design for the system. This would also provide a longer lasting life for detection performances of the system.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

I) Marchant et al 6,353,502 disclose an optical system including an array of VCSEL.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956

Que T Le
Primary Examiner
Art Unit 2878